

## § 1.338(i)-1

## 26 CFR Ch. I (4-1-03 Edition)

(iv) In its liquidation, old T is deemed to distribute the \$25,000 note to B, since B actually sold the stock partly for that consideration. To the extent of the remaining liquidating distribution to B, it is deemed to receive, along with A and C, the balance of old T's liquidating assets in the form of cash. Under section 453(h), B, unless it makes an election under section 453(d), is not required to treat the receipt of the note as a payment for the T stock; P's payment of the \$25,000 note in Year 7 to B is a payment for the T stock. Because section 453(h) applies to B, old T's deemed liquidating distribution of the note is, under section 453B(h), not treated as a taxable disposition by old T.

(v) Under section 1366, A reports 40 percent, or \$22,500, of old T's \$56,250 gain recognized in Year 1. Under section 1367, this increases A's \$10,000 adjusted basis in the T stock to \$32,500. Next, in old T's deemed liquidation, A is considered to receive \$40,000 for its old T shares, causing it to recognize an additional \$7,500 gain in Year 1.

(vi) Under section 1366, B reports 40 percent, or \$22,500, of old T's \$56,250 gain recognized in Year 1. Under section 1367, this increases B's \$10,000 adjusted basis in its T stock to \$32,500. Next, in old T's deemed liquidation, B is considered to receive the \$25,000 note and \$15,000 of other consideration. Applying section 453, including section 453(h), to the deemed liquidation, B's selling price and contract price are both \$40,000. Gross profit is \$7,500 (\$40,000 selling price - B's basis of \$32,500). B's gross profit ratio is 0.1875 (gross profit of \$7,500 ÷ \$40,000 contract price). Thus, \$2,812.50 (0.1875 × \$15,000) is Year 1 gain attributable to the deemed liquidation. In Year 7, when the \$25,000 note is paid, B has \$4,687.50 (0.1875 × \$25,000) of additional gain.

(vii) Under section 1366, C reports 20 percent, or \$11,250, of old T's \$56,250 gain recognized in Year 1. Under section 1367, this increases C's \$5,000 adjusted basis in its T stock to \$16,250. Next, in old T's deemed liquidation, C is considered to receive \$20,000 for its old T shares, causing it to recognize an additional \$3,750 gain in Year 1. Finally, under paragraph (d)(5)(ii) of this section, C is considered to acquire its stock in T on the day after the acquisition date for \$20,000 (fair market value = grossed-up amount realized of \$100,000 × 20%). C's holding period in the stock deemed received in new T begins at that time.

(f) *Inapplicability of provisions.* The provisions of section 6043, § 1.331-1(d), and § 1.332-6 (relating to information returns and recordkeeping requirements for corporate liquidations) do not apply to the deemed liquidation of old T under paragraph (d)(4) of this section.

(g) *Required information.* The Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form.

[T.D. 8940, 66 FR 8950, Feb. 13, 2001]

### § 1.338(i)-1 Effective dates.

(a) *In general.* The provisions of §§ 1.338-1 through 1.338-7, 1.338-10 and 1.338(h)(10)-1 apply to any qualified stock purchase occurring after March 15, 2001. For rules applicable to qualified stock purchases on or before March 15, 2001, see §§ 1.338-1T through 1.338-7T, 1.338-10T, 1.338(h)(10)-1T and 1.338(i)-1T in effect prior to March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(b) *Section 338(h)(10) elections for S corporation targets.* The requirements of §§ 1.338(h)(10)-1T(c)(2) and 1.338(h)(10)-1(c)(2) that S corporation shareholders who do not sell their stock must also consent to an election under section 338(h)(10) will not invalidate an otherwise valid election made on the September 1997 revision of Form 8023, "Elections Under Section 338 For Corporations Making Qualified Stock Purchases," not signed by the nonselling shareholders, provided that the S corporation and all of its shareholders (including nonselling shareholders) report the tax consequences consistently with the results under section 338(h)(10).

[T.D. 8940, 66 FR 9954, Feb. 13, 2001]

### COLLAPSIBLE CORPORATIONS; FOREIGN PERSONAL HOLDING COMPANIES

### § 1.341-1 Collapsible corporations; in general.

Subject to the limitations contained in § 1.341-4 and the exceptions contained in § 1.341-6 and § 1.341-7(a), the entire gain from the actual sale or exchange of stock of a collapsible corporation, (b) amounts distributed in complete or partial liquidation of a collapsible corporation which are treated, under section 331, as payment in exchange for stock, and (c) a distribution made by a collapsible corporation which, under section 301(c)(3),

is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property, shall be considered as ordinary income.

[T.D. 7655, 44 FR 68459, Nov. 29, 1979]

**§ 1.341-2 Definitions.**

(a) *Determination of collapsible corporation.* (1) A collapsible corporation is defined by section 341(b)(1) to be a corporation formed or availed of principally (i) for the manufacture, construction, or production of property, (ii) for the purchase of property which (in the hands of the corporation) is property described in section 341(b)(3), or (iii) for the holding of stock in a corporation so formed or availed of, with a view to (a) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and (b) the realization by such shareholders of gain attributable to such property. See § 1.341-5 for a description of the facts which will ordinarily be considered sufficient to establish whether or not a corporation is a collapsible corporation under the rules of this section. See paragraph (d) of § 1.341-5 for examples of the application of section 341.

(2) Under section 341(b)(1) the corporation must be formed or availed of with a view to the action therein described, that is, the sale or exchange of its stock by its shareholders, or a distribution to them prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and the realization by the shareholders of gain attributable to such property. This requirement is satisfied in any case in which such action was contemplated by those persons in a position to determine the policies of the corporation, whether by reason of their owning a majority of the voting stock of the corporation or otherwise. The requirement is satisfied whether such action was contemplated, unconditionally, conditionally, or as a recog-

nized possibility. If the corporation was so formed or availed of, it is immaterial that a particular shareholder was not a shareholder at the time of the manufacture, construction, production, or purchase of the property, or if a shareholder at such time, did not share in such view. Any gain of such a shareholder on his stock in the corporation shall be treated in the same manner as gain of a shareholder who did share in such view. The existence of a bona fide business reason for doing business in the corporate form does not, by itself, negate the fact that the corporation may also have been formed or availed of with a view to the action described in section 341(b).

(3) A corporation is formed or availed of with a view to the action described in section 341(b) if the requisite view existed at any time during the manufacture, production, construction, or purchase referred to in that section. Thus, if the sale, exchange, or distribution is attributable solely to circumstances which arose after the manufacture, construction, production, or purchase (other than circumstances which reasonably could be anticipated at the time of such manufacture, construction, production, or purchase), the corporation shall, in the absence of compelling facts to the contrary, be considered not to have been so formed or availed of. However, if the sale, exchange or distribution is attributable to circumstances present at the time of the manufacture, construction, production, or purchase, the corporation shall, in the absence of compelling facts to the contrary, be considered to have been so formed or availed of.

(4) The property referred to in section 341(b) is that property or the aggregate of those properties with respect to which the requisite view existed. In order to ascertain the property or properties as to which the requisite view existed, reference shall be made to each property as to which, at the time of the sale, exchange, or distribution referred to in section 341(b) there has not been a realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property. However, where any such